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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 225

HARRY BAETICH, PETITIONER

v.

OVETA CULP HOBBY, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the referee (R. 5-7) and of the District Court (R. 19-21) have not been reported. The opinion of the Court of Appeals (Pet. 11-14) has been reported at 212 F. 2d 480.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1954 (Pet. 15). The petition for a writ of certiorari was filed on July 20, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a father, who was originally supported by his daughter but was then supported by his son during the twenty-seven months of the daughter's fatal illness and thereafter, is entitled upon the death of the daughter to survivorship benefits which are predicated under the Social Security Act upon the receipt of support from a child "at the time of" such child's death.

STATUTES AND REGULATIONS INVOLVED

1. Section 202(h) of the Social Security Act, as amended by the Social Security Act Amendments of 1950, 64 Stat. 482, 42 U.S.C. 402(h), provides in pertinent part:

> (h) (1) Every parent (as defined in this subsection) of an individual who died a fully insured individual after 1939, * * * if such parent—
>
> (A) has attained retirement age,
>
> (B) was receiving at least one-half of his support from such individual at the time of such individual's death and filed proof of such support within two years of such date of death,
>
> * * * * *
>
> (E) * * * shall be entitled to a parent's insurance benefit * * *.

2. Section 205(g) of the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 405(g), provides in pertinent part:

> (g) Any individual, after any final decision of the Administrator made after a hear-

ing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Administrator may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of its answer the Administrator shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Administrator, with or without remanding the cause for a rehearing. The findings of the Administrator as to any fact, if supported by substantial evidence, shall be conclusive, * * *. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions.

3. 20 C.F.R. 404.720 provides:

§ 404.720 *Evidence of receipt of support by parent.* A parent who applies for monthly

benefits based upon the wages and self-employment income of an individual shall submit evidence of receipt of at least one-half of his support from such individual. Such evidence shall be a signed statement by the parent that, at the time of the individual's death, he was receiving at least one-half of his support from such individual. This statement shall set forth, as of the time of the individual's death and for a period of not less than one year prior to such time, the items expended and used for the parent's support and the value of each thereof, the amount of the parent's income, if any, and the items of contributions to the parent's support, the value and time of each, and by whom furnished. If the evidence described above is not obtainable, the reason therefor shall be stated and the applicant may submit other evidence of probative value. Proof that a parent was receiving at least one-half of his support from an individual, at the time of such individual's death, must, except as otherwise provided in § 404.1319, be filed within two years after the death of such individual (see § 404.328).

STATEMENT

Gertrude Baetich died on September 28, 1951 (R. 6). Until July 1949, she had supplied virtually all the support for her aged father, the petitioner (R. 6). At that time, however, she became incurably ill of cancer. Given only four months to live by using orthodox methods of treatment, she submitted to certain experimental cures which pro-

longed her life for 27 months (R. 20). Since Gertrude was unable to earn a living during the time of her illness, her brother Emanuel assumed the burden of supporting her as well as his father, the petitioner (R. 9-10).

After the death of Gertrude, who had been insured under the Social Security Act, petitioner filed an application for parents' insurance benefits. Section 202(h) of the Act (*supra*, p. 2) authorized the award of benefits to a parent under certain conditions which include that the parent

> was receiving at least one-half of his support from such individual [*i.e.*, the deceased] *at the time of such individual's death.* [Emphasis added]

The Federal Security Agency denied petitioner's claim on the ground that the deceased had not supported him at the time of her death (R. 14). Petitioner requested a hearing before a referee who held that "it would not be reasonable to interpret the phrase 'at the time of' as used in section 202(h) * * * to mean a period ended more than two years prior to the wage earner's death." Accordingly, the referee found that the deceased daughter had not supported her father at the time of her death (R. 5-7).

Review of the decision was sought by way of civil action as authorized under Section 205(g) of the Act (*supra*, pp. 2-3). The District Court decided in favor of petitioner. It felt that in view of the peculiar facts existing in the instant case the Federal Security Administrator should have inter-

preted the statutory language "at the time of her death" to include the 27 months of the daughter's fatal illness (R. 19-21). The Court of Appeals reversed (Pet. 11-14). Following the reasoning of *Stephens* v. *Federal Security Administrator*, 121 F. Supp. 120 (E.D. Ill.), the Second Circuit held that "the beneficiary's entitlement to benefits depended 'on the existence or non-existence of an economic relationship which has been terminated by the death of the wage earner'," and found that in the instant case "the dependency of the plaintiff on his son for the major part of his support for the twenty-seven months preceding the death of the daughter-wage-earner, created an economic relationship between the plaintiff and his son which had superseded his dependency on the daughter" (Pet. 14).

ARGUMENT

Under Section 202(h) of the Social Security Act (*supra*, p. 2), a surviving parent is entitled to insurance benefits if he meets with certain conditions including that he received at least one-half of his support from the deceased child "at the time of" the child's death. Petitioner claims the benefit of this statutory provision in spite of the facts that his daughter had ceased to support him 27 months before her death and that during this period he, as well as his daughter, were fully supported by his son. He seeks to have the statute interpreted as if it read: "if he was receiving his support from such individual at the time of such individual's death or at the time such individual became incapacitated to support him." We submit that the decision be-

low is correct and accords with the settled administrative practice, and that the interpretation which petitioner supports is inconsistent with both the language of the Act and the purposes which it seeks to accomplish.

1. As their terms indicate, the parents' benefit provisions of the Social Security Act do not provide for an automatic award on the death of a child, nor were they designed as compensation for the bereavement; they are directed solely at the alleviation of "a serious *financial loss* [suffered by parents] upon the death of the child who was their chief support [emphasis added]."[1] This basis for statutory compensation is particularly appropriate to the field of social legislation. See, e.g., *Baltimore & Philadelphia Steamboat Co.* v. *Norton,* 284 U. S. 408, 414; *Weeks* v. *Behrend,* 135 F. 2d 258, 259 (C.A.D.C.), interpreting workmen's compensation legislation. The court below, in keeping with the practical philosophy of the Social Security Act (cf. *Thompson* v. *Lawson,* 347 U. S. 334, 336-337), therefore properly applied a practical test which turned upon the question whether the parent suffered a financial loss—the termination of an economic relationship of dependency—as the result of the child's death, regardless of the length of the interval between the last support payment by the child and his death.

No such financial loss is suffered by a parent at the time of the death of a formerly supporting

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[1] H. Rept. No. 2526, 79th Cong., 2d Sess., p. 22; S. Rept. 1862, 79th Cong., 2d Sess., p. 30, and see H. Rept. 728, 76th Cong., 1st Sess., p. 7, S. Rept. 734, 76th Cong., 1st Sess., p. 7.

child where this support relationship has been superseded by a definite—not merely stop-gap—arrangement pursuant to which the duty to support has been assumed by another child for an indefinite period of time. In such a situation the economic relationship of support has shifted from the first to the second child; whether this occurs with or without the fault of the first child is immaterial. If the second child should die, the parent plainly would be entitled to survivorship benefits, provided the other conditions of Section 202(h) are met.

This interpretation of the statute is fully in accord with its purpose to compensate surviving parents for an actual loss of support, and it cannot be called "cruel" or "shockingly unjust" (cf. Pet. 7, 9). The key period is the time of the child's death, and the touchstone for the payment of benefits is the parent's economic position at that time. Congress apparently saw no need for the payment of social security benefits to a parent who at the time of the death of the child formerly supporting him is regularly being assisted by another child, even if this might result in a failure to relieve the financial burden shouldered by the latter child.[2]

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[2] It should be remembered that the Social Security Act does not constitute a contractual plan under which the insured pays premiums and is assured that either he or his relatives will obtain insurance benefits. The contributions of the insured take the form of an additional income tax (Internal Revenue Code Secs. 1500-1538) and benefits are payable only where all the statutory conditions have been met. Hence, in view of the fact that the original concern of the Social Security Act centered upon old age insurance and that survivorship benefits are predicated upon dependency, it may happen frequently that

2. The decision below is substantially in accord with the administrative interpretation of the Act. As the court has pointed out (Pet. 13), there are no regulations directly defining the statutory language "at the time of such individual's death." On the other hand, regulations going back to January 1, 1940, the effective date of the survivor benefit provisions of the Social Security Act,[3] have required the submission of a statement, covering a period of not less than a year preceding the death of the supporting child, setting forth the contributions of the child toward the parent and the latter's income from other sources.[4] The obvious purpose of this regulation—as recognized by the court below (Pet. 13)—is to provide the background and information required for an administrative decision whether or not the particular case comes within the scope of the statute; thus, the regulation itself is based on the view that the question whether the parent was supported by the child at the time

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no benefits whatever become payable upon the death before retirement age of a fully insured person. This factor has been considered in the computation of the premiums and benefits. H. Rept. 728, 76th Cong., 1st Sess., p. 7, S. Rept. 734, 76th Cong., 1st Sess., p. 7. Moreover, the lump sum payments pursuant to Section 202(i) of the Act provide for the return of a large portion of the contributions made by the insured. In the instant case, they amount to $145.50, as compared to approximately $150.50 paid by the deceased as social security taxes.

[3] Cf. Section 201 of the Social Security Act Amendment of 1939, 53 Stat. 1362.

[4] Social Security Regulations No. 3, Section 403.703(i), of May 21, 1940, effective January 1, 1940, 5 F.R. 1849, 1865, now 20 C.F.R. 404.720.

of his death is essentially a question of fact to be determined on the basis of all the circumstances. That the parent has not received any support from the child for an appreciable length of time, while not conclusive by itself, may well show that at the time of the child's death the support relationship had come to an end.[5] And while Section 202(h) of the Social Security Act has been liberalized twice,[6] the language "at the time of such individual's death" has been left intact. In such circumstances, the failure to change the administrative interpretation cannot be disregarded. Cf. *Hecht* v. *Malley*, 265 U. S. 144, 153; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 308-311.

3. Although the survivorship benefit provision of the Social Security Act has been in effect for nearly fifteen years (*supra*, p. 9), there has been only

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[5] The statement of the referee to the effect that the Social Security Administration has construed the phrase "at the time of death" to mean a "period of approximately one year prior to the wage earner's death" (R. 6) apparently is based upon an inconsequential misunderstanding of the meaning of the "not less than one year" clause of 20 C.F.R. 404.720. See the decision below at Pet. 13-14.

[6] Social Security Act Amendments of 1946, Section 403 (60 Stat. 986) and Social Security Act Amendments of 1950, Section 101(a) (64 Stat. 482). In 1946, the term "wholly dependent and supported" was changed to "chiefly dependent and supported." In 1950, this requirement was relaxed to the present language, "was receiving at least one-half of his support from." The Social Security Act Amendments of 1954 (H.R. 9366, 83d Cong., 2d Sess.) do not change the text of Section 202(h). See S. Rept. No. 1987, 83d Cong., 2d Sess., pp. 96-98.

one reported case (*Stephens* v. *Federal Security Administrator,* 121 F. Supp. 120 (E. D. Ill.)), in addition to the instant one, in which the administrative interpretation of the clause "at the time of such individual's death" in Section 202 of the Act has been subject to judicial scrutiny.[7] This tends to indicate that the administrative practice has been working to the satisfaction of virtually all concerned. Moreover, in deciding the case at bar the Court of Appeals for the Second Circuit applied the test used in *Stephens* v. *Federal Security Administrator, supra.* Hence, there is harmony of administrative rulings and judicial decisions.

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[7] The unreported case of *Winters* v. *Oveta Culp Hobby,* U.S.D.C. for the Western District of Washington, Northern Division, No. 2857, decided on December 11, 1953, follows the reasoning of the *Stephens* case. We know of no other pertinent case.

CONCLUSION

The decision below is correct and in substantial accord with an administrative practice going back to the effective date of the statute; there is no conflict. For the above reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1954.

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HAROLD B. WILLEY, Cl

Supreme Court of the United States

OCTOBER TERM—1954

DOCKET No. 225

HARRY BAETICH,

Petitioner,

against

OVETA CULP HOBBY, Secretary, Department of Health, Education and Welfare,

Respondent.

PETITIONER'S REPLY BRIEF

Respondent's argument ignores (1) the express language of the Statute and (2) the basic question presented by the Petitioner.

Section 202(h) of the Social Security Act provides that the dependent parent receive "at least one-half of his support" from the insured wage earner. Thus, the Statute clearly recognizes that a dependent may receive a major portion of support (at least half) from other sources, yet be entitled to benefits under the Act, in the event of death of the wage-earner contributing one half.

Respondent urges that the Statute is directed "solely at the alleviation of 'a serious financial loss [suffered by parents] upon the death of the child'" (Respt. Br. p. 7), and that "no such financial loss is suffered by a parent at the time of death of a formerly supporting child where this support relationship has been superseded by a definite * * * arrangement pursuant to which duty to support has been assumed by another child for an indefinite period of time" (Respt. Br. pp. 7-8).

The error in such reasoning is obvious. If child A had been contributing $20.00 a week and child B $20.00 a week for the support of their parent, the death of child B leaves the parent with only $20.00 per week. Clearly, the parent has suffered a "serious financial loss". Following respondent's logic, the death of child B automatically brings about a so-called superseding "economic relationship", since the mere continuation of $20.00 payments by child A after B's death results in the fact that child A is supplying 100% support. Because the parent continues to receive $20.00 a week from child A, then constituting his sole maintenance, he is thereby deprived of survivorship benefits. There is no authority for such construction.

Respondent makes the untenable contention that since there has been only one reported case in 15 years concerning the survivorship benefit provisions of the Act, that is an indication that the administrative practice has been working to the satisfaction of all concerned.

In the attempted interpretation of this statute, there were two "rules of thumb," promulgated by the administrative agency, the 'four month' rule, later supplanted by the 'one year' rule, which the District Court held "should not be applied to this case" (R. 20). The Court of Appeals, on the other hand, in its opinion, observed "that the referee of the Agency was not accurate when, in his memorandum of decision, he said, apparently referring to the regulation just discussed, that Social Security Administration 'has interpreted the phrase * * * to mean the period of approximately one year prior to the wage earner's death.'" (Pet. p. 13), and goes on to state what it believes to be the "misconception" of the District Judge as to rulings and interpretations of the administrative agency (Pet. p. 13-14). Moreover, in the only two reported cases in the Federal courts, the District Judge in this case,

and the District Judge in the *Stephens* case decided in Illinois, different interpretations were made. It cannot therefore justifiably be concluded on this record that there has been consistency or uniformity in the interpretations of this Act.

Moreover, the paucity of cases under the Act is understandable. The survivor, if dissatisfied with a ruling of the Agency covering an administrative interpretation would be confronted with the cost of proceedings and appeals, such as were had here, well nigh prohibitive in the light of the small benefits to be derived, unless the legal services were supplied without charge by some friend or relative of the claimant. Here, the survivor, eighty-five (85) years of age, even if successful on the ultimate appeal, would receive approximately $35-40 monthly.

Respectfully submitted,

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